IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2121 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIJAYBHAI JAYANTIBHAI PATEL DIRECTOR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 2121 of 1999

MR SV RAJU for Petitioner No. 1

Mr V M Pancholi, APP for Respondent No. 1

MR BB NAIK for Respondent No. 2

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 18/07/2003

ORAL JUDGEMENT

Heard M/s. S V Raju, learned Advocate for the petitioner, Mr B B Naik, learned Advocate for respondent no.2 and Mr V M Pancholi, learned APP for the State.

2. It transpires that in terms of the order dated 21.1.2003 the learned Advocate for the petitioner had handed over three A/c. payee cheques to the learned Advocate for respondent no.2 towards full and final settlement of the case. Now it has been stated at Bar that those three cheques were placed in the account of respondent no.2 and the cheques have been credited into their account - meaning thereby all the three cheques have been honoured and encashed. This shows that the matter relates to a commercial transaction and the civil dispute between the parties has come to an end on account of the aforesaid payment. In that view of the matter, the criminal complaint does not survive. Even in view of the decision of the Apex Court in the case of B S Joshi v. State of Haryana, reported in (2003) 4 SCC 675, wherein it has been laid down that when substantial issues between the parties have been settled and when the main witness supports the quashing of the complaint, then there is no likelihood of conviction in the matter and in that event, this Court can exercise inherent jurisdiction under section 482 for quashing the criminal complaint. It was a matter relating to an offence under section 498A, 423 and 406 of IPC. There the wife and the husband compounded the matter and, therefore, the matter was ordered to be quashed by the Hon'ble the Apex Court making the above observations. The said observations will squarely apply to the facts of the case on hand. In the present case also the dispute related to non-payment of a particular amount towards the sale proceeds of chemicals sold by the complainant to the accused during the course of pendency of the present petition. When the amount as agreed between the parties has been paid as aforesaid and, when the civil dispute has come to an end by payment of full and agreed amount, I am of the view that this is a fit case for exercising power under section 482 of the Code of Criminal Procedure, 1973.

3. For the foregoing reasons, this petition is allowed. Criminal Case No.22/98 corresponding to M.Case No.5/98 pending before the learned Judicial Magistrate First Class, Modasa, is ordered to be quashed. Rule is made absolute to the above extent.

[D P Buch, J.]

msp